

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 03, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

ALEX M. AZAR II, in his official  
capacity as Secretary of the United States  
Department of Health and Human  
Services; and UNITED STATES  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,  
Defendants.

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NATIONAL FAMILY PLANNING &  
REPRODUCTIVE HEALTH  
ASSOCIATION, FEMINIST WOMEN'S  
HEALTH CENTER, DEBORAH OYER,  
M.D., and TERESA GALL, F.N.P.,  
Plaintiffs,  
v.  
ALEX M. AZAR II, in his official capacity  
as Secretary of the United States

No. 1:19-cv-03040-SAB

**ORDER DENYING  
DEFENDANTS' MOTION TO  
STAY PRELIMINARY  
INJUNCTION PENDING  
APPEAL**

**ORDER DENYING DEFENDANTS' MOTION TO STAY PRELIMINARY  
INJUNCTION PENDING APPEAL ~ 1**

Department of Health and Human  
 Services; UNITED STATES  
 DEPARTMENT OF HEALTH AND  
 HUMAN SERVICES, DIANE FOLEY,  
 M.D., in her official capacity as Deputy  
 Assistant Secretary for Population Affairs,  
 and OFFICE OF POPULATION  
 AFFAIRS,  
 Defendants.

Before the Court is Defendant's Motion to Stay Preliminary Injunction  
 Pending Appeal, ECF No. 58. The motion was heard without oral argument.

Defendants ask the Court to stay the Court's Order granting Plaintiffs'  
 Motions for Preliminary Injunction, ECF No. 54, entered on April 25, 2019. The  
 Order enjoins Defendants from implementing or enforcing in any way the Final  
 Rule published on March 2019 on a nationwide basis. In essence, Defendants are  
 asking the Court to reconsider its earlier ruling and permit the Final Rule to go  
 into effect. *See Nken v. Holder*, 556 U.S. 418, 428 (2009) ("...a stay operates upon  
 the judicial proceeding itself. It does so either by halting or postponing some  
 portion of the proceeding, or by temporarily divesting an order of  
 enforceability." ).

Recently, the Ninth Circuit was facing this same issue when a district court  
 issued a TRO and the United States asked it to say the TRO pending appeal. *See*  
*East Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219 (9th Cir. 2018). There, the  
 Circuit set forth the approach courts should use in determining whether to grant a  
 stay pending appeal:

A stay is an 'intrusion into the ordinary processes of administration  
 and judicial review,' and accordingly 'is not a matter of right, even if

1 irreparable injury might otherwise result to the appellant.” *Nken*,  
2 556 U.S. at 427 (2009) (citations omitted). “It is instead ‘an exercise  
3 of judicial discretion,’ and ‘the propriety of its issue is dependent  
4 upon the circumstances of the particular case.” *Id.* at 433 (internal  
5 alteration omitted) (*quoting* *Virginian Ry. Co. v. United States*, 272  
6 U.S. 658, 672–73 (1926)). “The party requesting a stay bears the  
burden of showing that the circumstances justify an exercise of that  
discretion,” and our analysis is guided by four factors:

(1) whether the stay applicant has made a strong  
showing that he is likely to succeed on the merits; (2)  
whether the applicant will be irreparably injured absent  
a stay; (3) whether issuance of the stay will  
substantially injure the other parties interested in the  
proceeding; and (4) where the public interest lies.

*Id.* at 433–34 (*quoting* *Hilton v. Braunskill*, 481 U.S. 770, 776  
(1987)). “The first two factors . . . are the most critical,” and the  
“mere possibility” of success or irreparable injury is insufficient to  
satisfy them. *Id.* at 434 (internal quotation marks omitted).

*Id.* at 1245-46.

The Court considers the final two factors after it concludes an  
applicant satisfies the first two. *Id.* at 1236.

Given that the Court has already considered these factors when it granted  
Plaintiffs’ Motions for Preliminary Injunction and concluded it is Plaintiffs, not  
Defendants, that have a likelihood of success on the merits, and Plaintiffs, not  
Defendants, that would suffer irreparable harm if the preliminary injunction was  
not granted, the Court finds that Defendants have not met their burden of showing  
that a stay in this matter would be appropriate.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Stay Preliminary Injunction Pending Appeal,  
3 ECF No. 58, is **DENIED**.

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order  
5 and forward copies to counsel.

6 **DATED** this 3rd day of June 2019.



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14 Stanley A. Bastian  
15 United States District Judge  
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